

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**JAMES JIRAK and ROBERT
PEDERSEN,**

Plaintiff,

v.

ABBOTT LABORATORIES, INC.,

Defendant.

No. 07 C 3626

Judge Ruben Castillo

Magistrate Judge Michael T. Mason

ABBOTT'S PRE-TRIAL MOTION FOR JUDGMENT AS TO WILLFULNESS

Defendant Abbott Laboratories, Inc. requests that the Court grant its motion and find that Plaintiffs may not recover damages beyond the FLSA's two-year limitations period. Supreme Court precedent makes clear that Abbott cannot be found to have willfully violated the Fair Labor Standards Act unless its position that its salesmen are overtime-exempt is objectively unreasonable, and that it was reckless. Plaintiffs have failed to do so here where the classification decision at issue has withstood challenge in a number of district courts and at least one Court of Appeals. Additionally, Abbott's classification decision cannot be deemed to be objectively unreasonable or reckless when its decision was supported by prior DOL statements on FLSA exemptions.

For all these reasons, addressed more fully in Abbott's accompanying memorandum of law, Abbott requests that the Court grant its Motion for Judgment as to Willfulness.

Dated: July 28, 2010

Respectfully submitted,

/s/ Brent D. Knight

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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2010, I electronically filed the foregoing *Abbott's Pre-Trial Motion for Judgment as to Willfulness* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/Brent D. Knight